

e-filing

Sonja S. Weissman (SBN 154320)
 Dana A. Blanton (SBN 232373)
 REED SMITH LLP
 1999 Harrison St., Suite 2400
 Oakland, CA 94612
 Telephone: 510.763.2000
 Facsimile: 510.273.8832
 Email: sweissman@reedsmith.com;
 dblanton@reedsmith.com

Michael K. Brown (SBN 104252)
 Ginger Heyman Pigott (SBN 162908)
 REED SMITH LLP
 355 South Grand Avenue, Suite 2900
 Los Angeles, CA 90071
 Telephone: 213.457.8000
 Facsimile: 213.457.8080
 Email: mkbrown@reedsmith.com;
 gheyman@reedsmith.com

Attorneys for Defendant
 Medtronic, Inc.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

JEFFREY SPICER,

Plaintiff,

vs.

MEDTRONIC, INC., MEDTRONIC PS
 MEDICAL, INC., and Does 1 to 50,

Defendants.

No.:

008-02789

(Removal of San Mateo Superior Court Case
 No. CIV 470954)

**NOTICE OF REMOVAL OF
 MEDTRONIC, INC. UNDER 28 U.S.C.
 1441(a)**

REED SMITH LLP

A limited liability partnership formed in the State of Delaware

GO 44 SEC. N
 NOTICE OF ASSIGNMENT
 TO MAGISTRATE JUDGE SENT

ADR

MEJ

PLEASE TAKE NOTICE that defendant Medtronic, Inc. ("Medtronic") hereby removes the above-captioned action from the Superior Court of the State of California in and for the County of San Mateo to the United States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 1332 and 1441. As set forth more fully below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441 because Medtronic has satisfied the procedural requirements for removal and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. In support of this Notice of Removal, Medtronic states the following:

I. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED

1. On March 6, 2008, Plaintiff Jeffrey Spicer ("Plaintiff") commenced this action entitled *Spicer v. Medtronic, Inc., et al.*, Case No. CIV 470954 against Medtronic, Inc. by filing a Complaint with the Superior Court of the State of California in and for the County of San Mateo. On May 2, 2008, Plaintiff filed an Amended Complaint, which added and Medtronic PS Medical, Inc. ("Medtronic PS Medical")¹ as a defendant. Plaintiff's Amended Complaint purports to plead a number of causes of action, but all of Plaintiff's putative claims are premised on the basic allegation that he was injured by allegedly defective Medtronic "tunneling tool and tip (also described as a carrier)." (Amended Compl. Pg. 4, ¶ Prod. L-1). A true and correct copy of the original Complaint and the First Amended Complaint are attached hereto as Exhibits "A" and "B" respectively.

2. The Amended Complaint was served on Medtronic on May 5, 2008. Medtronic is informed and believes that defendant Medtronic PS Medical was also served on May 5, 2008. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1441.

¹ Plaintiff refers to Medtronic PS Medical as "Medtronic PS Medical, Inc. dba Medtronic Neurologic Technologies." (Complaint at ¶1) This is not the correct entity name, but as set forth herein, the entity is not properly a defendant in this case in any event.

1 3. All properly joined and served defendants consent to this removal.²

2
3 4. The Superior Court of the State of California in and for the County of San Mateo is
4 located within the Northern District of California. *See* 28 U.S.C. § 83. Thus, venue is proper in this
5 Court because it is the “district and division embracing the place where such action is pending.” 28
6 U.S.C. § 1441(a).

7
8 5. On June 3, 2008, Medtronic filed an Answer to the Complaint. A true and correct
9 copy of Medtronic’s Answer filed in this action is attached hereto as Exhibit “C.”

10
11 6. No previous application has been made for the relief requested herein.

12
13 7. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served
14 upon Medtronic, including the Complaint and Summons, are attached hereto.

15
16 8. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served
17 upon counsel for Plaintiff and a copy is being filed with the Clerk of the Court for the Superior Court
18 of the State of California in and for the County of San Mateo.³

19
20
21
22
23
24 ² The Complaint purports to name Medtronic PS Medical, Inc. as codefendant. As discussed below, however,
25 Medtronic PS Medical has been fraudulently joined as a defendant herein. Accordingly, Medtronic PS Medical’s
26 consent to this removal is not required. *See* 28 U.S.C. § 1441(b); *Hewitt v. City of Stanton*, 798 F.2d 1230, 1233 (9th Cir.
1986) (co-defendants who are fraudulently joined need not join in removal).

27 ³ By filing a Notice of Removal in this matter, Medtronic does not waive its right to object to service of process, the
28 sufficiency of process, jurisdiction over the person, or venue, and Medtronic specifically reserves the right to assert any
defenses and/or objections to which it may be entitled.

1 **II. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER**
2 **JURISDICTION PURSUANT TO 28 U.S.C. § 1332**
3

4 9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because this
5 action is between citizens of different states and it is apparent that Plaintiff seeks recovery of an
6 amount in excess of \$75,000, exclusive of costs and interest.
7

8 **A. Diversity of Citizenship**
9

10 10. There is complete diversity between Plaintiff and the sole properly joined defendant,
11 Medtronic.
12

13 11. Medtronic is now, and at the time of the filing of this action was, a corporation
14 existing under the laws of the State of Minnesota, having its principal place of business in the State
15 of Minnesota. Medtronic thus is a citizen of Minnesota for purposes of determining diversity. 28
16 U.S.C. § 1332(c)(1).
17

18 12. Medtronic is informed and believes that plaintiff is, and was at the time of the filing
19 of this action, a citizen of the state of California.
20

21 13. Upon information and belief, none of the Doe defendants have been substituted with
22 any named defendants or been served with process in the state court action. For purposes of
23 removal, "the citizenship of defendants sued under fictitious names shall be disregarded." 28 U.S.C.
24 §1441(a); *accord Soliman v. Phillip Morris Inc.*, 311 F.3d 966, 971 (9th Cir. 2002); *McCabe v.*
25 *General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987). Therefore, the citizenship of Does 1 to
26 50 should be disregarded for purposes of diversity.
27
28

14. Because the remaining named defendant – Medtronic PS Medical – is fraudulently joined, its citizenship must likewise be ignored for the purpose of determining the propriety of removal. *See McCabe*, 811 F.2d at 1339. *Accord Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998) (“It is a commonplace that fraudulently joined defendants will not defeat removal on diversity grounds.”) (citations omitted).

15. As the Ninth Circuit has explained, “[f]raudulent joinder is a term of art.” *McCabe*, 811 F.2d at 1339. It “is not intended to impugn the integrity of Plaintiff or [his] counsel.” *Brown v. Allstate Ins. Co.*, 17 F. Supp. 2d 1134, 1137 (S.D. Cal. 1998). A defendant is fraudulently joined and its presence in the lawsuit is ignored for purposes of determining diversity where no viable cause of action has been stated against the resident defendant. *See Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001); *Ritchey*, 139 F.3d at 1318-19; *United Computer Sys., Inc. v. AT&T Corp.*, 298 F.3d 756, 761 (9th Cir. 2002).

16. A defendant is fraudulently joined and its presence in the lawsuit is ignored for purposes of determining diversity “if the plaintiff fails to state a cause of action against the resident defendant, and the failure is obvious according to the settled rules of the state.” *Morris*, 236 F.3d at 1067; *Ritchey*, 139 F.3d at 1318-19; *TPS Utilicom Services Inc.*, 223 F. Supp. 2d 1089, 1100 (C.D. Cal. 2002) (citations omitted).

17. The Ninth Circuit has made clear that “[w]here fraudulent joinder is an issue . . . ‘[t]he defendant seeking removal to the federal court is entitled to present the facts showing the joinder to be fraudulent.’” *Ritchey*, 139 F.3d at 1318 (*quoting McCabe*, 811 F.2d at 1339). Thus, “[f]raudulent joinder claims may be resolved by ‘piercing the pleadings’ and considering summary judgment-type evidence such as affidavits and deposition testimony.” *Morris*, 236 F.3d at 1068 (citation omitted). *Accord Ritchey*, 139 F.3d at 1318 (“If we had been required [in *McCabe*] to look at facts outside of the complaint to decide that issue, we would have done so.”); *McCabe*, 811 F.2d at 1339 (considering sworn Declarations in determining fraudulent joinder issue).

18. Thus, “a removing defendant” may “submit facts showing that a resident defendant had ‘no real connection with the controversy.’” *Ritchey*, 139 F.3d at 1318 (*quoting Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921)). That is precisely the situation here. Medtronic PS Medical is not properly joined as a defendant in this suit because, as the Declaration submitted by Medtronic establishes, Medtronic PS Medical is not now, and has never been, a manufacturer, seller, distributor, or marketer of “tunneling tool[s]” and/or “tip[s] (also described as . . . carrier[s])” that plaintiff alleges caused his injury. (See Amended Compl. Pg. 4, ¶ Prod. L-1; and Declaration of William J. Hooper In Support of Medtronic Inc.’s Notice of Removal, (“Hooper Decl.”) attached hereto as Exhibit “D” at ¶2). In fact, the tunneling tool and tip at issue in this lawsuit was manufactured by another Medtronic entity that is incorporated in and has its principle place of business in Minnesota. (Hooper Decl., Exh. D, ¶2). Therefore, Medtronic PS Medical is not a proper defendant to this action.

19. Accordingly, Medtronic PS Medical was improperly joined as a defendant and its citizenship may not be considered in assessing whether there is diversity of citizenship under 28 U.S.C. § 1332.

20. Because Plaintiff is, on information and belief, a citizen of California and the sole properly named Defendant, Medtronic, is not a citizen of California, complete diversity exists in this action.

B. Amount in Controversy

21. The amount in controversy requirement of 28 U.S.C. § 1332 is also satisfied. Under 28 U.S.C. § 1332(a), the amount in controversy in a case where federal jurisdiction is based on diversity of citizenship must exceed \$75,000. Where, as here, the plaintiff fails to allege a specific amount of damages in the complaint, the District Court must “examine the complaint to determine whether it is ‘facially apparent’ that the claims exceed the jurisdictional amount.” *White v. FCI USA, Inc.*, 319 F.3d 672, 675 (5th Cir. 2003).

1 22. Plaintiff here allege injuries as a result of his physician's use of "a tunneling tool and
2 tip (also described as a carrier)," used to assist with connection of extensions used in Deep Brain
3 Stimulation ("DBS") device placement. (Complaint at pg. 4, ¶ Prod. L-1). Plaintiff does not seek to
4 limit the amount of compensatory damages that he alleges he is entitled to receive.

5
6 23. Plaintiff alleges that the tunneling tool and tip (also described as a carrier) were
7 defective, and that as a result he was injured. (Complaint at pg. 4, ¶ Prod. L-1). Plaintiff alleges that
8 his damages include general damages, damages for medical and hospital expenses, loss of wages,
9 and loss of earning capacity. (Complaint at ¶ 11).

10
11 24. Based on these allegations, it is "facially apparent" from his Complaint that Plaintiff
12 seeks an amount in excess of \$75,000.

13
14 25. Other federal courts have found that the amount in controversy likely exceeds
15 \$75,000 in cases alleging similar types of damages. *See, e.g., Lockett v. Delta Airlines, Inc.*, 171
16 F.3d 295, 298 (5th Cir. 1999) (finding it "facially apparent" that plaintiff's claim exceeded \$75,000
17 where plaintiff alleged property damage, travel expenses, an emergency ambulance trip, a six-day
18 stay in the hospital, pain and suffering, humiliation, and temporary inability to do housework after
19 her hospitalization); *White*, 319 F.3d at 674 (finding it "facially apparent" that plaintiff's wrongful
20 termination claim exceeded \$75,000 based on claims for loss of pay, fringe benefits, impaired
21 earning capacity, harm to credit, emotional distress, etc.). The District Court in *White* concluded that
22 the compensatory damages alone "in all likelihood" exceeded \$75,000. *White*, 319 F.3d at 675.

23 ///

24 ///

25 ///

26 ///

27 ///

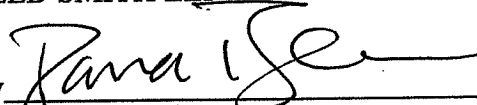
28 ///

1 WHEREFORE, Medtronic respectfully removes the above-described action from the
2 Superior Court of the State of California in and for the County of San Mateo to this Court.
3

4 DATED: June 4, 2008.

REED SMITH LLP

By



Sonja S. Weissman
Dana A. Blanton
Attorneys for Defendant
Medtronic Inc.

8
9 DOCSOAK-9909323.3
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

EXHIBIT A

PLD-PI-001

SHORT TITLE: Spicer v. Medtronic	CASE NUMBER:
-------------------------------------	--------------

4. ☐ Plaintiff (name):
is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.
5. Each defendant named above is a natural person
- a. ☒ except defendant (name): Medtronic, Inc.
 (1) ☐ a business organization, form unknown
 (2) ☒ a corporation
 (3) ☐ an unincorporated entity (describe):

 (4) ☐ a public entity (describe):
 (5) ☐ other (specify):
- b. ☐ except defendant (name):
 (1) ☐ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):

 (4) ☐ a public entity (describe):
 (5) ☐ other (specify):
- c. ☐ except defendant (name):
 (1) ☐ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):

 (4) ☐ a public entity (describe):
 (5) ☐ other (specify):
- d. ☐ except defendant (name):
 (1) ☐ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):

 (4) ☐ a public entity (describe):
 (5) ☐ other (specify):
- ☐ Information about additional defendants who are not natural persons is contained in Attachment 5.
6. The true names of defendants sued as Does are unknown to plaintiff.
- a. ☒ Doe defendants (specify Doe numbers): 1-25 were the agents or employees of other named defendants and acted within the scope of that agency or employment.
- b. ☒ Doe defendants (specify Doe numbers): 26-50 are persons whose capacities are unknown to plaintiff.
7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):
8. This court is the proper court because
- a. ☐ at least one defendant now resides in its jurisdictional area.
- b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
- c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.
- d. ☐ other (specify):
9. ☐ Plaintiff is required to comply with a claims statute, and
- a. ☐ has complied with applicable claims statutes, or
- b. ☐ is excused from complying because (specify):

PLD-PI-001

SHORT TITLE:

Spicer v. Medtronic

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a. ☐ Motor Vehicle
- b. ☒ General Negligence
- c. ☐ Intentional Tort
- d. ☒ Products Liability
- e. ☐ Premises Liability
- f. ☒ Other (*specify*):

Breach of warranty

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☐ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☐ property damage
- f. ☒ loss of earning capacity
- g. ☐ other damage (*specify*):

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (*in cases for personal injury or wrongful death, you must check (1)*):

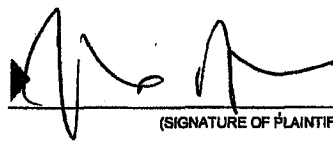
- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*):

Date: March 6, 2008

Thomas A. Cohen

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

PLD-PI-001(5)

SHORT TITLE:

CASE NUMBER:

First

CAUSE OF ACTION—Products Liability

Page

4

(number)

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint
 (Use a separate cause of action form for each cause of action.)

Plaintiff (name): Jeff Spicer

Prod. L-1. On or about (date): March 9, 2007 plaintiff was injured by the following product:
 A Medtronic tunneling tool and tip, a Class I medical device, used in Deep Brain Stimulation surgery.

Prod. L-2. Each of the defendants knew the product would be purchased and used without inspection for defects.
 The product was defective when it left the control of each defendant. The product at the time of injury was being

☒ used in the manner intended by the defendants.☐ used in the manner that was reasonably foreseeable by defendants as involving a substantial danger not readily apparent. Adequate warnings of the danger were not given.

Prod. L-3. Plaintiff was a

☒ purchaser of the product.☐ user of the product.☐ bystander to the use of the product.☐ other (specify):

PLAINTIFF'S INJURY WAS THE LEGAL (PROXIMATE) RESULT OF THE FOLLOWING:

Prod. L-4. ☒ **Count One—Strict liability** of the following defendants whoa. ☒ manufactured or assembled the product (names):

Medtronic, Inc.

☒ Does 1 to 25b. ☒ designed and manufactured component parts supplied to the manufacturer (names):

Medtronic, Inc.

☒ Does 26-50 toc. ☒ sold the product to the public (names):

Medtronic, Inc.

☒ Does 1 to 25Prod. L-5. ☒ **Count Two—Negligence** of the following defendants who owed a duty to plaintiff (names):

Medtronic, Inc.

☒ Does 1 to 25Prod. L-6. ☒ **Count Three—Breach of warranty** by the following defendants (names):

Medtronic, Inc.

☒ Does 1 to 25a. ☒ who breached an implied warrantyb. ☐ who breached an express warranty which was☐ written ☐ oralProd. L-7. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are☐ listed in Attachment-Prod. L-7 ☐ as follows:

Page 1 of 1

EXHIBIT B

05/05/2008 10:46 4157771990

TOM COHEN

PAGE 02/02

5/5/08 → 2:40P

SUMMONS
(CITACION JUDICIAL)**NOTICE TO DEFENDANT:**
(AVISO AL DEMANDADO):

Medtronic, Inc., Medtronic PS Medical, Inc. and Does 1 to 50

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Jeffrey SpicerFOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**ENDORSED FILED**
SAN MATEO COUNTY

MAY 2 2008

Clerk of the Superior Court
By C. KANTARIS
DEPUTY CLERK

You have 30 CALENDAR DAYS after the summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito debe que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de tasas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Mateo Superior Court
400 County Center
Redwood City, CA 94063CASE NUMBER
(Número del Caso)

CTV 470954

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Thomas A. Cohen, 639 Front St., 4th floor, San Francisco, CA 94111, (415) 777-1905DATE
(Fecha) MAY 2 2008

JOHN C. FITTON

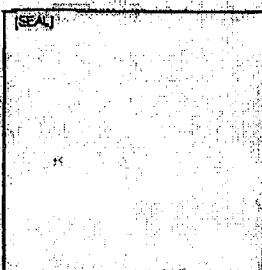
Clerk by
(Secretario)

G. KANTARIS

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010)).

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

- under: ☒ CCP 410.10 (corporation) ☐ CCP 410.00 (minor)
☐ CCP 410.20 (defunct corporation) ☐ CCP 410.70 (conservatee)
☐ CCP 410.40 (association or partnership) ☐ CCP 410.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Form Approved for Mandatory Use
Official Courts of California
SMA-100 (Rev. January 1, 2004)**SUMMONS**

Code of Civil Procedure §§ 412.20, 425

Downloaded from www.courtinfo.ca.gov

11620942.tif - 5/5/2008 11:52:51 AM

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Medtronic, Inc.; Medtronic PS Medical, Inc. and Does 1 to 50

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTA DEMANDANDO EL DEMANDANTE):

Jeffrey Spicer

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito debe que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

San Mateo Superior Court
400 County Center
Redwood City, CA 94063

CASE NUMBER
(Número del Caso)

CIV 470954

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Thomas A. Cohen, 639 Front St., 4th floor, San Francisco, CA 94111. (415) 777-1905

DATE:
(Fecha) MAY 2 2008

JOHN C. FITTON

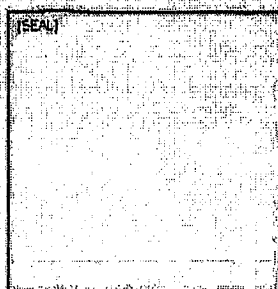
Clerk, by
(Secretario)

O. KANTARIS

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons; (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

Medtronic, Inc.

under: ☒ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☐ other (specify):☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

Page 1 of 1

1. Plaintiff (name or names): Jeffrey Spiser
alleges causes of action against defendant (name or names):
Medtronic, Inc. and Medtronic PS Medical, Inc. dba Medtronic Neurologic Technologies

2. This pleading, including attachments and exhibits, consists of the following number of pages:

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):

(1) ☐ a corporation qualified to do business in California

(2) ☐ an unincorporated entity (describe):

(3) ☐ a public entity (describe):

(4) ☐ a minor ☐ an adult

(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed

(b) ☐ other (specify):

(5) ☐ other (specify):

b. ☐ except plaintiff (name):

(1) ☐ a corporation qualified to do business in California

(2) ☐ an unincorporated entity (describe):

(3) ☐ a public entity (describe):

(4) ☐ a minor ☐ an adult

(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed

(b) ☐ other (specify):

(5) ☐ other (specify):

American LegalNet, Inc.
www.FormsWorldNow.com

PLD-PI-001

SHORT TITLE: Speer v. Medtronic	CASE NUMBER: CIV 470954
---	-----------------------------------

4. ☐ Plaintiff (name):
is doing business under the fictitious name (specify):
and has complied with the fictitious business name laws.
5. Each defendant named above is a natural person
- a. ☒ except defendant (name): **Medtronic, Inc.**
- (1) ☐ a business organization, form unknown
(2) ☒ a corporation
(3) ☐ an unincorporated entity (describe):
(4) ☐ a public entity (describe):
(5) ☐ other (specify):
- b. ☒ except defendant (name): **Medtronic PS Medical**
- (1) ☐ a business organization, form unknown
(2) ☒ a corporation
(3) ☐ an unincorporated entity (describe):
(4) ☐ a public entity (describe):
(5) ☐ other (specify):
- c. ☐ except defendant (name):
- (1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity (describe):
(4) ☐ a public entity (describe):
(5) ☐ other (specify):
- d. ☐ except defendant (name):
- (1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity (describe):
(4) ☐ a public entity (describe):
(5) ☐ other (specify):
- ☐ Information about additional defendants who are not natural persons is contained in Attachment 5.
6. The true names of defendants sued as Does are unknown to plaintiff.
- a. ☒ Do defendants (specify Do numbers): **1-25** were the agents or employees of other named defendants and acted within the scope of that agency or employment.
- b. ☒ Do defendants (specify Do numbers): **26-50** are persons whose capacities are unknown to plaintiff.
7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):
8. This court is the proper court because:
- a. ☐ at least one defendant now resides in its jurisdictional area.
b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.
d. ☐ other (specify):
9. ☐ Plaintiff is required to comply with a claims statute, and
- a. ☐ has complied with applicable claims statutes, or
b. ☐ is excused from complying because (specify):

PLD-PI-001

SHORT TITLE:

Spicer v. Medtronic

CASE NUMBER:

CIV 470954

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. ☐ Motor Vehicle
b. ☐ General Negligence
c. ☐ Intentional Tort
d. ☒ Products Liability
e. ☐ Premises Liability
f. ☐ Other (specify):

11. Plaintiff has suffered

- a. ☒ wage loss
b. ☐ loss of use of property
c. ☒ hospital and medical expenses
d. ☒ general damage
e. ☐ property damage
f. ☒ loss of earning capacity
g. ☐ other damage (specify):

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit, for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
(2) ☐ punitive damages

The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):

- (1) ☒ according to proof
(2) ☐ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Dated: May 2, 2008

/s/ Thomas A. Cohen

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

PLD-PI-001(5)

SHORT TITLE Spleer v. Medtronic	CASE NUMBER: CIV 470954
------------------------------------	----------------------------

First CAUSE OF ACTION—Products Liability Page 4
(number)

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint
(Use a separate cause of action form for each cause of action.)

Plaintiff (name): Jeffrey Spicer

RECEIVED

MAY 02, 2008

SUPERIOR COURT
CIVIL DIVISION

Prod. L-1: On or about (date): March 9, 2007

plaintiff was injured by the following product:

A tunneling tool and tip (also described as a carrier), a Class I medical device, used to place and connect subcutaneous extensions to a pulse generator following surgery the previous week to implant a deep brain stimulation device.

Prod. L-2: Each of the defendants knew the product would be purchased and used without inspection for defects.

The product was defective when it left the control of each defendant. The product at the time of injury was being

☒ used in the manner intended by the defendants.

☐ used in the manner that was reasonably foreseeable by defendants as involving a substantial danger not readily apparent. Adequate warnings of the danger were not given.

Prod. L-3: Plaintiff was a

☒ purchaser of the product

☐ user of the product

☐ bystander to the use of the product

☒ other (specify)

surgical patient--product used in surgery

PLAINTIFF'S INJURY WAS THE LEGAL (PROXIMATE) RESULT OF THE FOLLOWING:

Prod. L-4: ☒ Count One—Strict liability of the following defendants who

a. ☒ manufactured or assembled the product (names):

Medtronic, Inc.; Medtronic PS Medical, Inc.

☒ Does 1 to 25

b. ☒ designed and manufactured component parts supplied to the manufacturer (names):

Medtronic, Inc.; Medtronic PS Medical, Inc.

☒ Does 26 to 50

c. ☒ sold the product to the public (names):

Medtronic, Inc.; Medtronic PS Medical, Inc.

☒ Does 1 to 25

Prod. L-5: ☒ Count Two—Negligence of the following defendants who owed a duty to plaintiff (names):

Medtronic, Inc.; Medtronic PS Medical, Inc.

☒ Does 1 to 25

Prod. L-6: ☒ Count Three—Breach of warranty by the following defendants (names):

Medtronic, Inc.; Medtronic PS Medical, Inc.

☒ Does 1 to 25

a. ☒ who breached an implied warranty

b. ☐ who breached an express warranty which was

☐ written ☐ oral

Prod. L-7: ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are

☐ listed in Attachment Prod. L-7 ☐ as follows:

EXHIBIT C

1 Sonja S. Weissman (SBN 154320)
2 Dana A. Blanton (SBN 232373)
3 REED SMITH LLP
4 1999 Harrison St., Suite 2400
5 Oakland, CA 94612
6 Telephone: 510.763.2000
7 Facsimile: 510.273.8832
8 Email: sweissman@reedsmith.com;
9 dbanton@reedsmith.com

6 Michael K. Brown (SBN 104252)
7 Ginger Heyman Pigott (SBN 162908)
8 REED SMITH LLP
9 355 South Grand Avenue, Suite 2900
10 Los Angeles, CA 90071
11 Telephone: 213.457.8000
12 Facsimile: 213.457.8080
13 Email: mkbrown@reedsmith.com;
14 gheyman@reedsmith.com

11 Attorneys for Defendant
12 Medtronic, Inc.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN MATEO

16 JEFFREY SPICER,

17 Plaintiff,

18 vs.

19 MEDTRONIC, INC., MEDTRONIC PS
20 MEDICAL, INC., and DOES 1 to 50,

21 Defendants.

Case No.: CIV 470954

**DEFENDANT MEDTRONIC, INC.'S
ANSWER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT AND DEMAND
FOR JURY TRIAL**

Compl. Filed: May 2, 2008

**ENDORSED FILED
SAN MATEO COUNTY**

JUN 8 - 2008

Clerk of the Superior Court
By C. KANTARIS
DEPUTY CLERK

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

1 Defendant Medtronic, Inc. ("Medtronic") answers the First Amended Complaint
2 ("Complaint") of Plaintiff Jeffrey Spicer as follows:

3
4 **GENERAL DENIAL**

5
6 Answering Plaintiff's unverified First Amended Complaint, Medtronic denies each and every
7 allegation contained therein and denies that by reason of any act or omission by Medtronic, its
8 agents, employees, or independent contractors, Plaintiff was injured or damaged in any sum, or at
9 all.

10
11 **AFFIRMATIVE DEFENSES**

12
13 Medtronic, while reserving the right to assert other defenses as discovery proceeds, and
14 without assuming the burden of proof when the burden of proof rests on Plaintiff, asserts the
15 following separate and independent affirmative defenses in further opposition to the Complaint:

16
17 **FIRST AFFIRMATIVE DEFENSE**

18
19 Plaintiff's Complaint, and each count and claim contained therein, fails to state a claim upon
20 which relief can be granted.

21
22 **SECOND AFFIRMATIVE DEFENSE**

23
24 Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation,
25 including without limitation, Code of Civil Procedure Sections 335.1, 337, and 399.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of consent, waiver, estoppel, unclean hands, and/or laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the express preemption clause of the Medical Device Amendments of 1976, 21 U.S.C. § 360c et seq., which expressly preempts state requirements that are "different from, or in addition to" the requirements imposed by federal law. 21 U.S.C. § 360k(a)(1); *Riegel v. Medtronic, Inc.*, 552 U.S. ___, 128 S. Ct. 999, 1002, 1011 (2008).

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the Food and Drug Administration has exclusive or primary jurisdiction over the matters asserted in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are preempted, in whole or in part, by federal laws and regulations, including without limitation those governing the labeling, advertisement and sale of medical devices.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are preempted, in whole or in part, by the deference state law gives to discretionary actions by the Food and Drug Administration under the Food, Drug and Cosmetic Act, and the Medical Device Amendments thereto.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because there is no private right of action under the Food, Drug and Cosmetic Act for claims such as those asserted by Plaintiff.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because at all times relevant to the Complaint, Medtronic met or exceeded the requisite standard of care.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Medtronic did not owe any duty to Plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because no act or omission on Medtronic's part caused or contributed to the alleged injuries and damages described in the Complaint.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff's alleged injuries, if any, were the result of intervening and/or superseding causes.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by Plaintiff's comparative or contributory fault or negligence.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because no action or inaction by Medtronic was the proximate cause of Plaintiff's alleged damages, if any.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff's alleged damages, if any, were caused in whole or in part by the acts or omissions of Plaintiff or third parties over whom Medtronic had no control or authority.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff assumed the risk of his alleged injuries, if any, and engaged in the activities alleged in the Complaint after giving his informed consent.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the learned intermediary doctrine, because Medtronic provided adequate warnings to learned intermediaries.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because any alleged injuries or damages sustained by Plaintiff may have been caused by the misuse or abuse of Medtronic's products by Plaintiff or other persons.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Medtronic's products may have been substantially changed after they left Medtronic's control and before Plaintiff suffered any alleged injuries or damages.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because any alleged injuries or damages sustained by Plaintiff may have been caused by the alteration and/or method of implantation and/or maintenance of Medtronic's products after they left Medtronic's control.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because any alleged injuries or damages sustained by Plaintiff may have been the direct result of Plaintiff's pre-existing medical conditions, sub-medical conditions, natural causes, or the result of other circumstances over which Medtronic had no control and for which Medtronic is not responsible.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because any alleged injuries or damages sustained by Plaintiff may be the result of an unforeseeable series of events over which Medtronic had no control, and as such, constitutes acts of God for which Medtronic cannot be held liable.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because any alleged injuries or damages sustained by Plaintiff may be the result of idiosyncratic reactions by Plaintiff that were not reasonably foreseeable and for which Medtronic cannot be held liable.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the risks associated with the use of the medical devices at issue, if any, are outweighed by the utility and benefits such devices provide.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the medical device at issue was not unreasonably dangerous or defective, was suitable for the purpose for which it was intended, and was distributed with adequate and sufficient warnings.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the methods, standards and techniques of designing, manufacturing and labeling the medical devices at issue complied with and conformed to the generally recognized state of the art at the time such devices were designed,

1 manufactured and labeled.

2
3 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

4
5 Plaintiff's claims are barred, in whole or in part, because Plaintiff fails to assert a feasible
6 safer design for Medtronic's products alleged to be defective.

7
8 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

9
10 Plaintiff's claims are barred, in whole or in part, because Medtronic acted reasonably and in
11 good faith at all times material herein, based on all relevant facts and circumstances known by
12 Medtronic at the time it acted.

13
14 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

15
16 Plaintiff's claims are barred, in whole or in part, because Plaintiff did not rely reasonably on
17 any act, omission or representation made by Medtronic.

18
19 **THIRTIETH AFFIRMATIVE DEFENSE**

20
21 Plaintiff's claims are barred, in whole or in part, because there was no defect in the device at
22 issue at the time it left Medtronic's possession.

23
24 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

25
26 Plaintiff's claims are barred, in whole or in part, because to the extent Plaintiff alleges that
27 Medtronic failed to warn about alleged defects in the device at issue or other alleged causes of
28 Plaintiff's injuries or damages, if any, the doctors and other health care providers associated with the

1 device were or should have been aware of any risks or hazards associated with it, and to the extent
2 that such doctors and health care providers failed to advise, inform or warn Plaintiff of such risks or
3 hazards, Medtronic cannot be held responsible.

4
5 **THIRTY-SECOND AFFIRMATIVE DEFENSE**
6

7 Plaintiff's claims are barred, in whole or in part, to the extent that he has failed to plead
8 actual injury.

9
10 **THIRTY-THIRD AFFIRMATIVE DEFENSE**
11

12 Plaintiff's claims are barred, in whole or in part, to the extent that the alleged injuries are too
13 remote from Medtronic's conduct to state a claim.

14
15 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**
16

17 Plaintiff's claims are barred, in whole or in part, by the economic loss doctrine.

18
19 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**
20

21 Medtronic adopts and incorporates by reference as if fully set out herein any and all defenses
22 which are or may become available to it under the Restatement (Second) of Torts § 402A and all
23 comments thereto, and the Restatement (Third) of Torts §§ 1-21 and comments thereto.

24
25 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**
26

27 Plaintiff's claims are barred, in whole or in part, by the principles set forth in the Restatement
28 (Second) of Torts § 388, Comment n, and any similar doctrines and/or principle in the Restatement

1 (Third) of Torts.

2
3 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**
4

5 Plaintiff's claims are barred, in whole or in part, by the principles set forth in the Restatement
6 (Second) of Torts § 402A, Comment k, and the Restatement (Third) of Torts: Products Liability § 6.
7

8 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**
9

10 Plaintiff's claims are barred, in whole or in part, because to the extent Plaintiff allege failure
11 to warn by Medtronic, the doctors and other health care providers who were associated with the
12 device at issue, or were or should have been aware of any risk and/or hazard that Plaintiff alleges
13 rendered the device defective and allegedly caused Plaintiff's damages, if any, failed to warn
14 Plaintiff of such risks and/or hazards.
15

16 **THIRTY-NINTH AFFIRMATIVE DEFENSE**
17

18 Plaintiff's warranty-based claims are barred, in whole or in part, because Medtronic did not
19 make or breach any warranties that are applicable to Plaintiff.
20

21 **FORTIETH AFFIRMATIVE DEFENSE**
22

23 Plaintiff's warranty-based claims are barred, in whole or in part, by Plaintiff's failure to give
24 proper or timely notice of any alleged defect or breach of warranty.
25

26 **FORTY-FIRST AFFIRMATIVE DEFENSE**
27

28 Plaintiff's warranty-based claims are barred, in whole or in part, because Plaintiff was not in

1 privity with Medtronic.

2
3 **FORTY-SECOND AFFIRMATIVE DEFENSE**

4
5 Plaintiff's warranty-based claims are barred, in whole or in part, by any and all express
6 conditions, disclaimers, modifications or exclusions made by Medtronic.

7
8 **FORTY-THIRD AFFIRMATIVE DEFENSE**

9
10 Plaintiff's warranty-based claims are barred, in whole or in part, by Plaintiff's lack of
11 reliance on any such warranties.

12
13 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

14
15 Plaintiff's warranty-based claims are barred, in whole or in part, by Plaintiff's failure to
16 satisfy all conditions precedent or subsequent to the enforcement of any such alleged warranties.

17
18 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

19
20 Plaintiff's claims are barred, in whole or in part, because the promotion of products sold or
21 manufactured by Medtronic is protected by the First Amendment of the United States Constitution
22 and similar provisions in applicable state constitutions..

23
24 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

25
26 Plaintiff's claims are barred, in whole or in part, to the extent that they lack standing to
27 pursue the claims alleged against Medtronic.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Medtronic did not violate any statute or law, as alleged by Plaintiff.

FIFTIETH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Medtronic is entitled to the benefit of all defenses and presumptions contained in, or arising from, any rule of law or statute of any state whose substantive law controls the action.

FIFTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, reduced and/or limited pursuant to applicable statutory and common law regarding limitation of awards, caps on recovery and setoffs.

FIFTY-SECOND AFFIRMATIVE DEFENSE

Any verdict or judgment that might be recovered by Plaintiff must be reduced by those amounts that have already indemnified Plaintiff, or will in the future with reasonable certainty indemnify Plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source including but not limited to insurance, social security, workers' compensation or employee benefit programs.

FIFTY-THIRD AFFIRMATIVE DEFENSE

In the event that Plaintiff has sustained damages as alleged in the Complaint, which Medtronic denies, discovery or investigation may reveal that Plaintiff's claims are barred or reduced

1 to the extent Plaintiff failed to mitigate any damages allegedly sustained.

2
3 **FIFTY-FOURTH AFFIRMATIVE DEFENSE**
4

5 Plaintiff is not entitled to attorneys' fees under any act or theory forming the basis of any of
6 Plaintiff's claims.

7
8 **FIFTY-FIFTH AFFIRMATIVE DEFENSE**
9

10 Medtronic alleges that the provisions of Civil Code Section 1431.2 are applicable to the
11 Complaint and each cause of action therein.

12
13 **FIFTY-SIXTH AFFIRMATIVE DEFENSE**
14

15 Medtronic alleges that each of the other parties, and/or third persons not parties to this action,
16 may have been negligent or legally responsible or otherwise at fault for the damages alleged in
17 Plaintiff's Complaint. Medtronic, therefore, requests that in the event of a finding of any liability in
18 favor of Plaintiff or settlement or judgment against Medtronic, an apportionment of fault be made
19 among all parties and third persons as permitted by *Li v. Yellow Cab Company*, 13 Cal. 3d 804
20 (1975). Medtronic further requests a judgment and declaration of partial indemnification and
21 contribution against all other parties or person in accordance with the apportionment of fault.
22

23 **FIFTY-SEVENTH AFFIRMATIVE DEFENSE**
24

25 Medtronic alleges that the State of California's judicially created definitions of manufacturing
26 defect and design defect and standards for determining whether there has been an actionable failure
27 to warn are unconstitutional in that, among other things, they are void for vagueness and place an
28 undue burden upon interstate commerce, as well as constitute an impermissible effort to regulate in

1 an area that has previously been preempted by the federal government.

2
3 **FIFTY-EIGHTH AFFIRMATIVE DEFENSE**

4
5 Plaintiff's claims are barred, in whole or in part, because all acts or omissions by Medtronic
6 (or its agent or representative) were privileged or justified.

7
8 **FIFTY-NINTH AFFIRMATIVE DEFENSE**

9
10 Plaintiff's claims are barred, in whole or in part, by the doctrines of res judicata, collateral
11 estoppel, issue preclusion and/or claim preclusion.

12
13 **SIXTIETH AFFIRMATIVE DEFENSE**

14
15 Medtronic hereby gives notice that it intends to rely upon any other defenses that may
16 become available or apparent during the discovery proceedings in this matter and hereby reserves its
17 right to amend its Answer to assert any such defense.

18
19 **WHEREFORE, Medtronic requests:**

- 20
21 1. That Plaintiff take nothing by the Complaint;
- 22
23 2. A dismissal of the Complaint with prejudice and an award of Medtronic's reasonable
24 attorneys' fees to the extent permitted by law;
- 25
26 3. Judgment in favor of Medtronic and against Plaintiff;
- 27
28 4. Costs of suit herein; and

1 5. Such other and further relief that the Court may deem just and proper.

2
3 DATED: June 3, 2008.

REED SMITH LLP

4
5 By 

Sonja S. Weissman

Dana A. Blanton

Attorneys for Defendant

Medtronic, Inc.

REED SMITH LLP

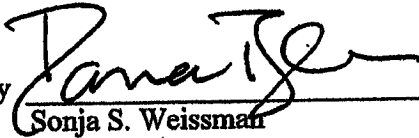
A limited liability partnership formed in the State of Delaware

REQUEST FOR JURY TRIAL

Answering Defendant respectfully requests a trial by jury on all causes of action and issues on which Answering Defendant is entitled to a jury trial.

DATED: June 3, 2008.

REED SMITH LLP

By 

Sonja S. Weissman
Dana A. Blanton
Attorneys for Defendant
Medtronic, Inc.

DOC50AK-9808547.1

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 1999 Harrison Street, Suite 2400, Oakland, CA 94612. On June 3, 2008, I served the following document(s) by the method indicated below:

DEFENDANT MEDTRONIC, INC.'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

- ☐ by transmitting via facsimile on this date from fax number +1 510 273 8832 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 PM and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. Service by fax was made by agreement of the parties, confirmed in writing. The transmitting fax machine complies with Cal.R.Ct 2003(3).
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
- ☐ by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth below. A signed proof of service by the process server or delivery service will be filed shortly.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. A copy of the consignment slip is attached to this proof of service.
- ☐ by transmitting via email to the parties at the email addresses listed below:

Thomas A. Cohen, Esq.
639 Front Street, 4th Floor
San Francisco, CA 94111
Telephone: (415) 777-1997
Fax: (415) 777-1990
Email: tomcohen@ionix.net
Attorney for Plaintiff

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

1 I declare under penalty of perjury under the laws of the State of California that the
2 above is true and correct. Executed on June 3, 2008, at Oakland, California.

3 
4 Trisha Suzette Hooper

5
6
7 DOCSOAK-9909885.1
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

EXHIBIT D

1 Sonja S. Weissman (SBN 154320)
2 Dana A. Blanton (SBN 232373)
3 REED SMITH LLP
4 1999 Harrison St., Suite 2400
5 Oakland, CA 94612
6 Telephone: 510.763.2000
7 Facsimile: 510.273.8832
8 Email: sweissman@reedsmith.com;
9 dblanton@reedsmith.com

6 Michael K. Brown (SBN 104252)
7 Ginger Heyman Pigott (SBN 162908)
8 REED SMITH LLP
9 355 South Grand Avenue, Suite 2900
10 Los Angeles, CA 90071
11 Telephone: 213.457.8000
12 Facsimile: 213.457.8080
13 Email: mkbrown@reedsmith.com;
14 gheyman@reedsmith.com

11 Attorneys for Defendant
12 Medtronic, Inc.

13 UNITED STATES DISTRICT COURT
14
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 JEFFREY SPICER,

17 Plaintiffs,

18 vs.

19 MEDTRONIC, INC., MEDTRONIC PS
20 MEDICAL, INC., and DOES 1 to 50,

21 Defendants.

No.

(Removal of San Mateo Superior Court Case No.
CIV 470954)

**DECLARATION OF WILLIAM J.
HOOPER IN SUPPORT OF MEDTRONIC,
INC.'S NOTICE OF REMOVAL**

1 I, William J. Hooper, declare as follows:

2
3 1. I am Vice President of Operations, Medtronic Neuromodulation ("Medtronic"). I
4 have been employed by Medtronic since 1987 and have held a variety of positions with
5 Medtronic. My business address is 710 Medtronic Parkway, Minneapolis, Minnesota 55432. I
6 have personal knowledge of the matters stated herein, and/or I have information based upon
7 documents maintained in the ordinary course of business. I could and would testify competently
8 thereto if called as a witness in this matter. I am over the age of 18 and a resident of the State of
9 Minnesota. I understand that this declaration is being provided in support of Medtronic's Notice
10 of Removal.

11
12 2. I understand that in addition to Medtronic, the Amended Complaint filed in this
13 action names Medtronic PS Medical. I am aware that Medtronic PS Medical is a Medtronic
14 entity located in Goleta, California. However, Medtronic PS Medical did not manufacture or sell
15 the components identified in this case. I understand that the Complaint filed in this matter
16 describes the device at issue as the "tunneling tool and tip (also described as a carrier)" used to
17 assist with connection of extensions used in Deep Brain Stimulation ("DBS") device placement.
18 The described tunneling tool and tip is manufactured and assembled by Medtronic, Inc. in
19 Minnesota. The specific components identified in the Complaint were not manufactured by
20 Medtronic PS Medical. The DBS system of which the subject components are a part is sold by
21 Medtronic's Neuromodulation business unit, which is part of Medtronic, Inc.

22
23 I declare under penalty of perjury under the laws of the State of California and the United
24 States that the foregoing is true and correct.

25 Dated: June 4, 2008

26
27 
28 William J. Hooper